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M. (Cr.) 2622 /2001

(JAIL APPEAL/ LEGAL AID/ D.B.CRIMINAL)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR (C.G.)

CR.A.NO. 507 OF 2001.

APPELLANT (In Jail) GANESHRAM

=:: VERSUS ::=

RESPONDENT THE STATE OF CHHATTISGARH

APPLICATION UNDER SECTION 389 OF CR.P.C. FOR GRANT OF BAIL AND SUSPENSION OF SENTENCE.

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

26-10-2006

Miss Minu Banerjee, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/ respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment dated 11th May, 2001, passed by the Sessions Judge, Surguja (Ambikapur) in Sessions Trial No.291/99, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of his wife Bariyati, sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that on 24-7-1999 at about 3 p.m., the accused attacked deceased Bariyati with a carpenter axe on her head as a result of which she sustained three lacerated wounds on left temporal & occipital regions. The occipital bone was fractured. On account of these injuries, Bariyati died instantaneously. The matter was reported by Joyra Kanwar (PW-1) in Police Station: Shankargarh under merg intimation Ex.P-2, based on that, the Station House Officer, Police Station: Shankargarh registered Crime No.45/99 under Section 302 of the I.P.C., took up the investigation and left for the scene of occurrence. He took into possession clothes of the deceased under Ex.P-3. The accused gave memorandum Ex.P-4 under Section 27

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of the Indian Evidence Act, 1872, regarding the place where he kept the carpenter axe, in pursuance of that, the carpenter axe was seized under Ex.P-6. He also took into possession plain soil and blood stained soil from the place of occurrence under Ex.P-5. The body of Bariyati was sent for post-mortem examination to Government Hospital, Shankargarh under Ex.P-7 where Dr. Smt. J. Kujur and Dr. J. Lakra conducted post-mortem and opined that the cause of death was shock due to head injury. The nature of death was homicidal. After giving notice to the Panchas, the Investigating Officer prepared the inquest report Ex.P-14 on the body of Bariyati. Site plan Ex.P-16 was prepared. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where the report Ex.P-20 was received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Surguja for trial.

The prosecution in order to establish charge against the accused examined nine witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that the witnesses have deposed against him on account of animosity, as his wife was having physical relations with one Shiv Kumar, when he was bringing her, she fell on a stone, on account of that she sustained the injuries, he is innocent and he has not committed the murder of his wife.

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Learned Sessions Judge after hearing the arguments of Public Prosecutor & counsel for the accused and perusal of the record, convicted and sentenced the accused.

In this case, Mr. Shyam Kinkar Shukla, Advocate, filed memo of appearance on behalf of the accused/appellant on 28-6-2001 and this matter was appearing in the list of final hearing cases since 18-9-2006, but he failed to appear before the Court. Even the Court staff was sent to call the Advocate, but Mr. Shukla was not traceable, therefore, on 12th October, 2006, Miss Minu Banerjee, Advocate, was asked to prepare the case and argue. Necessary papers were supplied to her. Therefore, today, she argued on behalf of the accused/appellant.

We have heard Miss Minu Banerjee, learned counsel appearing for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

The fact of homicidal death of Bariyati has not been disputed by learned counsel for the appellant. Apart from that, eyewitnesses Kum. Manti (PW-4) & Mst. Kamli (PW-5), who witnessed the crime when the accused was attacking Bariyati with the carpenter axe, have stated in their evidence that the accused attacked the deceased with carpenter axe. Dr. Smt. J. Kujur (PW-3), who conducted post-mortem on the body of Bariyati has stated in her evidence that there were three lacerated wounds on occipital & left parietal regions, temporal & occipital bones were fractured and on account of the head injury as a result of shock, Bariyati died, her death was homicidal in nature. The injuries sustained by

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~~Bariyati on head were sufficient in the ordinary course of nature~~ to cause death. Her report is Ex.P-8. She has further stated that she examined the carpenter axe sent by the Police Station and it was possible to cause the injuries present on the head of the deceased, by the carpenter axe. Therefore, from the above evidence it stands established that the death of deceased Bariyati was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Mst. Kamli (PW-5) is none else than sister of the accused who has categorically stated in her evidence that when she along with Manti returned from the field after grazing the cattle, she saw that her brother accused Ganesh was attacking the deceased with carpenter axe, Bariyati & Ganesh were quarrelling. When she went to intervene, accused Ganesh caught hold of her by hairs and Bariyati succumbed to the injuries sustained by her. The evidence of this witness has been corroborated by the evidence of Kum. Manti (PW-4) who also witnessed the crime and in cross-examination of these two eyewitnesses, defence has not been able to elicit any circumstance which makes the evidence of these witnesses unreliable or untrustworthy. Even Joyra Kanwar (PW-1) & Panchu Ram (PW-7) have stated in their evidence that the accused made extra judicial confession before them. Therefore, based on the above evidence of the eyewitnesses as also the evidence of PW-1 & PW-7 before whom the accused made extra judicial confession, involvement of the accused in the crime in question stands established beyond reasonable doubt. Finding of

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the trial Court based on the evidence of these four witnesses does not suffer from any illegality or infirmity.

Learned counsel for the appellant while inviting attention of the Court towards the evidence of Mst. Kamli (PW-5) argued that in examination-in-chief of this witness it has come on record that she saw the accused & the deceased quarrelling, therefore, the accused assaulted the deceased in a heat of passion, in a sudden fight without any pre-meditation, as such, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C. She placed reliance on the judgments of the Apex Court in the matter of **Shivappa Buddappa Kodkar alias Buddappagol v. State of Karnataka and others** reported in **2004 (3) CCSC 1604** and also in the matter of **K. Ramakrishnan Unnithan v. State of Kerala** reported in **1999 Cri.L.J. 2101**.

On the other hand, Mr. Gwalre supported the judgment of the trial Court and argued that the accused attacked the deceased with a deadly weapon like carpenter axe on head as a result of which she sustained four fatal injuries, and the act of the accused is not covered under Exception 4 to Section 300 of the I.P.C.

In order to attract the provisions of Exception 4 to Section 300 of the I.P.C. it is necessary that the following requirement of Exception 4 to Section 300 of the I.P.C. must be satisfied that if the accused committed the act without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

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If we look into the facts of the present case, Mst. Kamli (PW-5), sister of the accused, has stated in her evidence that when she returned to the house, she saw that the accused was attacking the deceased with carpenter axe and they were quarrelling. Therefore, at the most, from the evidence it can be inferred that the act of the accused was without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel. But the later part of Exception 4 to Section 300 of the I.P.C. is not attracted in the present case, because the second part of Exception 4 to Section 300 of the I.P.C. envisages that without the offenders having taken undue advantage or acted in a cruel or unusual manner. It is admitted position that deceased Bariyati was armless and if any altercation on account of any family dispute was there between the accused & the deceased, the accused ought to have assaulted the deceased with the carpenter axe once, but he did not stop there, he attacked the deceased three times with the carpenter axe, as per the medical evidence, as a result of which Bariyati received two lacerated wounds on left temporal region and one on occipital region, even the bones of temporal & occipital regions were fractured. Therefore, the accused assaulted the deceased, who was armless, with a deadly weapon like carpenter axe repeatedly, as such, it cannot be said that the accused had not taken any undue advantage of being armed with carpenter axe and he has not acted in a cruel or unusual manner.

As far as the judgments cited by learned counsel for the appellant is concerned, they are distinguishable on facts. In the

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matter of **K. Ramakrishnan** (supra), there was a single blow caused by the accused on an altercation and the Court reached to the conclusion that there was no intention to cause death. In the second matter i.e. **Shivappa** (supra), as regards facts of the case when the accused persons were passing through the field of the deceased some altercation took place between the deceased & the accused persons and each of the accused all of a sudden in a sudden fight assaulted the deceased only once as a result of which skull bone was fractured. Injuries were also sustained by the accused persons. Whereas, in the present case, wife of the accused Bariyati was armless and the accused repeatedly assaulted the deceased with carpenter axe on head thrice as a result of which bones of the head were fractured and she sustained two lacerated wounds on left temporal region and one on occipital region, the bones of temporal & occipital regions were fractured.

Therefore, we are of the considered opinion that the act of the accused is not covered under Exception 4 to Section 300 of the I.P.C. The intention of the accused was writ large to commit the murder of his wife. In the circumstances, the trial Court has rightly convicted and sentenced the accused under Section 302 of the I.P.C.

In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

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